IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RFA No. 78 of 2000

Reserved on : 27th June, 2007
Date of Decision: 9th July, 2007

Laxmi Ram	Appellant
Versus	
Land Acquisition Collector and others	Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? Yes.

For the appellant: Mr.Ramakant Sharma, Advocate.

For the respondents: Mr.J.K.Verma, Dy. Advocate General.

Sanjay Karol, J.

In CWP No. 1865 of 1995 this Court directed the respondent-State to complete the acquisition proceedings of the petitioner's land alleged to have been unauthorisedly taken into possession for the purposes of construction of 'Gaura – Chail road'.

Pursuant to the direction issued by this Court in the aforesaid writ petition, proceedings for acquisition of land under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) were initiated and after due compliance of all formalities, the Land Acquisition Collector, passed an award dated 19.3.1998 holding that the petitioner was not entitled for any compensation as the land in question belonged to the State.

Aggrieved by the said award, petitioner filed a petition under Sections 18 and 30 of the Act, which was duly adjudicated and after a

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

detailed enquiry it was held that petitioner was not entitled for any compensation as the State was the owner of the land.

Joint case of both the parties before this Court is that land in question was granted on lease to the petitioner initially under the Punjab Village Common Lands (Regulation) Act, 1961 and was subsequently renewed from time to time under the provisions of H.P. Village Common Lands (Vesting and Utilization Act), 1974. Admittedly, in terms of Ext.DA to Ext.DF, documents exhibited by the State, the lease in question was lastly extended for a period of 5 years with effect from 1994 to 1999.

Learned counsel for the petitioner has relied upon a decision of the Apex court in *Inder Parshad vs. Union of India and others,* reported in (1994) 5 SCC 239 to contend that as a lease holder petitioner had right in the land and as such was entitled for compensation for acquisition thereof. The Apex Court in the said judgment has held as under:-

> "In this case admittedly the Government being the owner of the land, the appellant held the demised land as lessee with superstructure built thereon and was in possession and enjoyment of the same on the date of acquisition. The contents of the award extracted hereinbefore clearly indicate that the Land Acquisition Collector could not determine compensation payable towards the leasehold interest held by the appellant. Being an owner the Government is not enjoined to acquire its own interest in the land or land alone for public purpose. When its land is granted on lease in favour of a lessee its power to resume the land is subject to non-fulfilment of the terms and conditions of the lease by the lessee. *So long as the lessee acts and complies with the covenants contained in the lease or the grant, the right to resumption in terms of the lease or grant would not arise. But when the land is required for public purpose, the Government should get absolute title thereof free from all encumbrances. Compensation becomes payable for the leasehold right or*

interest held by the lessee or grantee when the land is acquired. The point becomes clear from the following illustrations. Take a case where the Government granted lease of agricultural land on the annual payment of rent with a covenant that the Government is entitled to resume the land when needed for public purpose or as when the Government finds that the land is required for public purpose. In terms of the covenants, the Government is entitled to exercise its option to determine the lease though the lessee has been complying with the condition of payment of annual premium or rent and resume the land in accordance with terms of the grant. In that event the need to take recourse to acquisition and to make compensation does not arise. Take a case where the Government granted the lease of the open land with permission to the lessee to construct a building for his quiet enjoyment with appropriate covenants and the lessee with permission constructed the building and by complying with the covenants of the lease was in quiet enjoyment. The selfsame property, when required for public purpose, the Government cannot unilaterally determine the lease and call upon the lessee to deliver the possession. Therefore, the Government is required to exercise the power of eminent domain by invoking the provisions under the Land Acquisition Act for getting such land. The Collector shall have to determine the compensation towards the leasehold interest held by the lessee, if assessable separately and determine the compensation. The lessee being the owner of the superstructure and the Government being the owner of the land, if compensation is determined for both the components, then the same has to be apportioned between them. At what proportion the lessor and the lessee are entitled to receive the compensation has to be determined. In the absence of any covenant in the lease for payment and in the absence of any specific data available to him, the Collector has to determine the respective shares at which the compensation is to be apportioned between the Government and the lessee, the course open to the Land Acquisition Collector is to determine

> the total compensation, make an award and make a reference to the civil court under Section 30 for decision on appointment. Exactly that is the situation on the facts of this case. Take another illustration. *The Government grants a patta of its land subject to payment of land revenue. Later, the land is required for public purpose. The payment of land revenue is at par with the payment of land revenue payable by a private owner to the State. By grant of patta, the title has been vested in the grantee. Therefore, the grantee is entitled to the full compensation of the acquired land*."

The grant of the petitioner is covered by the provisions of H.P. Village Common Lands (Vesting and Utilization) Act, 1974 and the petitioner's lease does not entitle the State for a right of resumption without payment of compensation. Admittedly, when the acquisition proceedings were initiated, petitioner's right in the land was alive by virtue of a lease in his favour entitling him for compensation. He could be entitled for compensation as is clear from the aforesaid decision of the Apex Court. To what extent he would be entitled is a question of determination on facts.

For all the aforesaid reasons, the award dated 15th November, 1999 passed in Land Reference No.16-S/4 of 1998, titled as Laxmi Ram vs. Land Acquisition Collector and others, is set aside and the matter is remanded back to the learned District Judge, Solan, for decision afresh. Accordingly, Land Reference No.16-S/4 of 1998 is restored to its original position. It shall be open for the parties to lead such evidence as may be available for the purpose of fresh adjudication of the petition. Since the matter is old, the same shall be decided as expeditiously as possible and preferably within a period of nine months.

9th July, 2007 (Sanjay Karol)
(C) Judge